

**POLICY AND LAW COMMITTEE MEETING  
SEPTEMBER 13, 2007 – 1 PM  
DE PUBLIC ARCHIVES BLDG. – DOVER, DE**

**Present:** Brian Hartman, DLP; Jamie Wolfe, Consumer; Connie Hughes, DELARF; Chris Long, DHSS/DDDS; Tony Horstman, Parent; Tim Brooks, CDS; Wendy Strauss, GACEC; Karen Lazar, Ombudsman's Office; Lora Lewis, DPH; Ray Brouillette, Easter Seals; Carolanne O'Brien, DVR; Pat Maichle, DDC; Al Rose, DDC; Kyle Hodges, Staff

**Absent:** Daniese McMullin-Powell, SCPD; Brian Bard, Consumer; Marge Turner, UCP; Norwood Coleman, Family Member; Cookie Austin, Parent; Bob Osgood, SCPD; Kim Siegel, ASD; Rita Landgraf, SCPD; Regina Byers, GCAAPD; Liz Schantz, Consumer

**CALL TO ORDER**

In the absence of the co-chairs, Kyle Hodges called the meeting to order at 1:05 PM

**ADDITIONS OR DELETIONS TO THE AGENDA**

The DPC Task Force/PM 46 Policy, a DDDS case and the DHSS Smoking Policy were added to the agenda.

**APPROVAL OF MINUTES**

The minutes from the July 12, 2007 meeting were approved as submitted.

**REVIEW OF REGULATIONS AND POLICIES**

1. DMMA Final Medicaid Fraud Education Regulation [11 DE Reg. 319 (September 1, 2007)] – It was agreed no further action was needed.
2. DMMA Final LTC Promissory Note & Life Estate Reg. [11 DE Reg. 314 (September 1, 2007)] – Motion was made, seconded and approved for SCPD to send a thank you letter to DMMA.
3. DMMA Final Pediatric Nursing Facility Reimbursement Reg. [11 DE Reg. 312 (9/1/07)] - It was agreed no further action was needed.
4. DMMA Final Chronic Renal Disease Program Referral Reg. [11 DE Reg. 318 (9/1/07)] - It was agreed no further action was needed.
5. DSS Final Food Stamp “Household” Regulation [11 DE Reg. 332 (September 1, 2007)] - It was agreed no further action was needed.
6. DMMA Prop. LTC Annuity Regulation [11 DE Reg. 274 (September 1, 2007)] -

Motion was made, seconded and approved for SCPD to send a letter to DMMA consistent with Brian's memo.

7. DSS Final Food Stamp Non-discrimination Reg. [11 DE Reg. 325 (September 1, 2007)] - Motion was made, seconded and approved for SCPD to send a letter to the Office of the Assistant Secretary for Civil Rights with a copy to the Office of Adjudication and Compliance sharing past correspondence which requested the State to adopt a regulation which conforms to the federal standard. Council will inform them that it was unsuccessful and would like to the federal government's guidance to the State to prompt adoption of a regulation that conforms to the federal law. Chris Long abstained.

8. DPH Proposed Cancer Treatment Program Regulation [11 DE Reg. 278 (September 1, 2007)] - Motion was made, seconded and approved for SCPD to send a letter to DPH consistent with Brian's memo.

9. DPH Lead Paint Hazards Regulation [11 DE Reg. 280 (September 1, 2007)] – Chris Long noted that the Nanticoke Indians are recognized as a tribal council. It was agreed to delete “and corresponding tribal government authorities” in the 1<sup>st</sup> observation. Motion was made, seconded and approved for SCPD to send a letter to DPH consistent with the remainder of Brian's memo.

10. DOE Proposed Immunization Regulation [11 DE Reg. 250 (September 1, 2007)] - Motion was made, seconded and approved for SCPD to send a letter to DOE endorsing the 2-dose standard. In addition, Council will inform DOE that it understands the 1-year deferral of implementation given the short notice available to parents. Tim Brooks abstained.

11. DOE Proposed Substitute Teacher Regulation [11 DE Reg. 248 (September 1, 2007)] – Motion was made, seconded and approved for SCPD to send a letter to DOE consistent with Brian's memo. The letter will also be copied to members of the House Education Committee and Senate Education Committee. Tim Brooks abstained.

12. DOE Prop. Early Childhood Teacher Certification Reg. [11 DE Reg. 255 (September 1, 2007)] – Motion was made, seconded and approved for SCPD to defer to GACEC and, determining what clarification is made regarding whether regular education teachers may be involved in prekindergarten classes, SCPD will follow the lead of GACEC. Tim Brooks abstained.

Please note that the DOE provided the following information to Wendy on Sept. 19<sup>th</sup>:

“Only a few districts actually have prekindergarten classes for children without disabilities. There is no state regulation that requires them to have certified teachers in those classrooms. Where districts have “regular” prekindergarten, most of these classes are supported by state prekindergarten funds. The regulation for state prekindergarten only requires a teacher with a Child

Development Associate credential at a minimum, though encourages teachers with Associate's Degrees, preferably in early childhood education."

Given this information, SCPD wrote a letter to DOE deleting Brian's 2<sup>nd</sup> and 3<sup>rd</sup> observations and noted the following:

There is some "tension" between having an early childhood teacher certification covering students from birth onward and the absence of a regulation requiring such credentials for prekindergarten instructors. Therefore, SCPD endorses the concept of the early childhood teacher certification, but recommends that the DOE issue a regulation which would eventually require such instructor certification in prekindergarten programs.

13. DOE Prop. Exc. Children Special Education Teacher Reg. [11 DE Reg. 266 & 269 (9/1/07)] – Kyle noted that SCPD also commented on this regulation although the Register of Regulations did not recognize the letter. Motion was made, seconded and approved for SCPD to send a letter to DOE sharing the observations consistent with Brian's memo.

14. NCC Property Tax Abatement Ordinance [07-114] – Brian provided information on the proposed ordinance regarding property exemptions. SCPD sent a letter regarding this issue on Sept. 11, 2007.

## **OTHER ISSUES**

DPC Task Force/PM 46 Policy – Brian had shared a letter to Rep. Cathcart regarding DLP testimony provided to the DPC Legislative Task Force. Brian reviewed the letter which addressed the current Protection and Advocacy for Individuals with Mental Illness Act. In addition, DLP provided recommendations regarding the PM 46 Policy, reinstatement of the Human Rights Committee, implementation of a Morbidity/Mortality Review Committee, and funding of additional community placements.

Motion was made, seconded and approved for SCPD to send a letter to the Legislative Task Force and the Governor's Task Force on DPC endorsing DLPs comments.

Jamie proposed that SCPD recognize Rep. Cathcart for his dedication, enthusiasm and professionalism in addressing the issues surrounding DPC. He has truly listened to residents, family members and others who have an interest in this issue. Motion was made, and seconded to send a letter to Rep. Cathcart generally thanking him for undertaking this initiative and the manner in which he has lead the Task Force in approaching this issue. Much discussion ensued on this issue as some members did not believe a thank you letter was warranted given the situation and SCPD would need to write letters on a consistent basis for standard actions by legislators. In addition, Rep. Cathcart and others who receive letters may believe the disability community's issues have been resolved when there are many other areas to be addressed. Furthermore,

Council may run the risk of offending others when a letter is not written on another issue. A SCPD policy may need to be developed regarding the protocol to send letters. It was noted that SCPD and other disability organizations do write letters when policymakers have done something positive for the disability community. In addition, awards are presented to legislators. Moreover, others believed that this is a major issue that warrants recognition. Kyle called the motion to vote and the result was: 7 yes; 4 no, 2 abstain. Motion approved.

Pat reviewed the perspective of the Victims' Rights Task Force regarding the PM 46 Policy. Its draft concerns and recommendations are as follows:

- There is no clear guidance for the Divisions under the Department of Health & Social Services as to when to call the police, for what reasons, and who decides when the police will be called to investigate whether or not a crime has been committed. Departmental policy recites that police are to be contacted if criminal acts are "suspected" but implementation varies given the lack of further guidance. Each Division under DHSS has its own internal PM 46 policy that is to operationalize the standards and steps employees are to follow should an allegation be made by a patient or residential client of the Department. Each Division interprets the PM #46 somewhat differently and so follows it differently. These parallel investigations often leave the patients or residential clients with no victim services and no justice. All internal policies of the Divisions under the Department of Health & Social Services that support PM #46 must be reviewed for consistency across Divisions and changes made to ensure parity of practice for patients or clients.
- An anti-retaliation section needs to be added to the PM #46 to protect those who allege or report any acts of abuse/neglect.
- PM 46 covers more than crime; it also covers policy matters within the Department. A clearer threshold needs to be established to direct personnel when to contact law enforcement when an allegation has been made and define who makes that call. This threshold must be adhered to by every Division under the DHSS.
- The PM 46 duties should be removed from the Department of Health & Social Services and assigned to another state agency that is independent of the DHSS.

Motion was made, seconded and approved for SCPD to endorse these recommendations and that there would now be one cover letter from SCPD endorsing both the DLP letter and the Victims Rights Task Force letter when it is written. The letter will be written to the Legislative Committee and the Governor's Task Force on DPC.

Kyle provided an agenda for the Governor's Task Force on DPC and information on the website. Kyle noted that there will be live webcasts for meetings.

### SCPD September Meeting

Kyle provided a previously written email sent to the Executive Committee on the rationale to possibly cancel the September SCPD full Council meeting (e.g. inability of presenters to attend, no pressing issues/timelines). It was agreed to cancel the meeting.

DDDS Case – Kyle provided information on a case regarding eligibility for DDDS services. Brian reported that an adult child with disabilities was living out-of-state in a well-structured living environment with constant supervision. This person's parents moved to Delaware and wanted to move the adult child close to the family. DDDS would not commit to providing community residential services since the adult child was not a DE resident and therefore the residential needs were not urgent. This was then filed in U.S. District Court. The court rendered a decision in favor of the plaintiffs on the basis of the U.S. Constitution right to travel and relied on a welfare case. This should help people who are similarly situated.

DHSS Smoking Policy – Brian provided a press release and Kyle provided DLPs comments regarding the Department's intentions to ban smoking at all DHSS "hospital" campuses. The DLP comments focus on statutes which enable people to make choices and have the same rights as other citizens. They have the right to make bad choices, if legal, just like everyone else. DLP recommends promoting smoking cessation programs, but defer implementation of a smoking ban policy.

## **POSSIBLE FEDERAL ISSUES TO ADDRESS**

Kyle provided information on the following federal initiatives and the Committee discussed future intentions:

- The ADA Restoration Act – It was agreed that this should be addressed.
- H.R. 2839 – requires P&A's to give notice to, and obtain the authorization of, an individual before pursuing remedies for that person. Pat believed this bill would not be going anywhere. Therefore, it was agreed not to address this bill.
- S. 543/H.R. 1459 – improves Medicare beneficiary access by extending the 60 percent threshold used to determine whether a hospital or hospital unit is an inpatient facility. There did not seem to be an interest in this bill.
- SCHIP Bills – it was reported these have both passed.
- Medicaid Rehabilitative Services Option – Connie will obtain the regulations.

## **ADJOURNMENT**

The meeting was adjourned at 3:15 PM.

Respectively submitted,

Kyle Hodges  
SCPD Administrator  
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